

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STEVEN TILCHEN,

Case No. 1:17-cv-00051

Plaintiff,

-against-

CEMD ELEVATOR CORP. d/b/a CITY ELEVATOR,  
MITCHELL HELLMAN, STEPHAN DIEMER, CARL  
ALONGIS, and KONE, INC.,

Defendants/Counterclaimants.  
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**DECLARATION OF  
ELBERT F. NASIS, ESQ. IN  
SUPPORT OF  
DEFENDANTS/COUNTER  
CLAIMANTS MOTION  
FOR SUMMARY  
JUDGMENT**

Elbert F. Nasis, an attorney admitted to practice in the United States District court for the Southern District of New York, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. I am a partner with the law firm of FORCHELLI DEEGAN TERRANA LLP, attorneys for the defendants/counterclaimants, CEMD ELEVATOR CORP. d/b/a CITY ELEVATOR, MITCHELL HELLMAN, STEPHAN DIEMER and CARL ALONGIS (collectively, the “Defendants”). As such and from a review of all files maintained by my office pertaining to this matter, I am aware and have knowledge of all proceedings had hereinabove. I submit this affirmation in support of Defendants’ motion pursuant to Fed. R. Civ. P. 56 for summary judgment, seeking dismissal of the nine causes of action set forth in the second amended complaint (“SAC”) of plaintiff, Steven Tilchen (“Plaintiff”), wherein Plaintiff seeks unpaid commissions, overtime, statutory damages for wage notices, and damages for retaliation, and in support of Defendants’ motion pursuant to Fed. R. Civ. P. 56 for summary judgment on Defendants’ counterclaim against Plaintiff for tortious interference with contracts.

2. In the interests of brevity, I refer this Honorable Court to and incorporate as though fully stated herein the facts and legal argument articulated in the Defendants' Statement of Undisputed Facts Pursuant to Local Rule 56.1, Affidavit of Mitchell Hellman, and Memorandum of Law Submitted in Support of Defendants' Motion for Summary Judgment.

3. A true and complete copy of the Plaintiff's SAC [Doc. No. 54] filed herein is attached hereto as **Exhibit A**.

4. A true and complete copy of Defendants' Answer to Plaintiff's Second Amended Complaint with Counter-Claims ("Answer") [Doc. No. 64] filed herein is attached hereto as **Exhibit B**.

5. A true and complete copy of Plaintiff's Reply to Counterclaims [Doc. No. 65] filed herein is attached hereto as **Exhibit C**.

6. A true and complete copy of the Transcript of the Deposition of Mitchell Hellman ("Hellman Tr.") dated November 21, 2017 and January 3, 2018, is attached hereto as **Exhibit D**.

7. A true and complete copy of the Transcript of the Deposition of Carl Alongis dated January 5, 2018, is attached hereto as **Exhibit E**.

8. A true and complete copy of the Transcript of the Deposition of Anthony M. Santiago dated March 9, 2018, is attached hereto as **Exhibit F**.

9. A true and complete copy of the Transcript of the Deposition of Andrew Koontz, dated March 20, 2018, is attached hereto as **Exhibit G**.

10. A true and complete copy of the Transcript of the Deposition of Adam Geffner, dated April 21, 2018, is attached hereto as **Exhibit H**.

11. A true and complete copy of the Transcript of the Deposition of Plaintiff, dated November 17 and 20, 2017, is attached hereto as **Exhibit I**.

12. A true and complete copy of the sticky note outlining the commission schedule at Millar Elevator is annexed hereto as **Exhibit J**.

13. An exemplar of Plaintiff's paystubs issued by CEMD is annexed hereto as **Exhibit K**.

14. A true and complete copy of the Transcript of the Deposition of Glen Smocovich, dated April 10, 2018, is annexed hereto as **Exhibit L**.

15. A true and complete copy of the agreements between Keystone Elevator and (1) Brookfield Condominium; (2) The Guild for Exceptional Children (executed 2 contracts); (3) Hebrew Academy of the 5 Towns; (4) The Human Society of New York; (5) Jordan Cooper Real Estate; (6) Kulanu Academy; (7) Neighborhood Playhouse; (8) Project Renewals; (9) RVC Associate LP; (10) Ryan Center; (11) Sagansky Residences; (12) T. George Realty; (13) The Berkshire Bank; (14) Varick Realty; and (15) Seawane Country Club are attached hereto as **Exhibit M**.

16. A certified transcript of the recording made by Plaintiff on December 3, 2016 is annexed hereto as **Exhibit N**.

17. A true and complete copy of the Transcript of the Deposition of Stephan Diemer dated on January 4, 2018, is annexed hereto as **Exhibit O**.

18. A true and complete copy of the Asset Purchase Agreement with Schedule 1.01 is annexed hereto as **Exhibit P**.

19. A true and complete copy of the agreements between CEMD and (1) Brookfield Condominium; (2) The Guild for Exceptional Children (2 contracts); (3) Hebrew Academy of the Five Towns; (4) The Humane Society of New York; (5) Kulanu Academy; (6) Neighborhood Playhouse; (7) RVC Associate LP; (8) Ryan Center; (9) Sagansky Residences; (10) Seawane

Country Club; (11) Varick Realty; (12) T. George Realty; and (13) Berkshire Bank, are annexed hereto as **Exhibit Q**.

20. No prior application has been made for the relief sought herein.

WHEREFORE, I respectfully request that the Defendants' motion for summary judgment be granted in its entirety.

Dated: Uniondale, New York  
February 5, 2019

Respectfully submitted,

**FORCHELLI DEEGAN TERRANA LLP**

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